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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 UNITED STATES OF AMERICA,

Case No. 3:16-cr-00029-MMD-WGC

10 Plaintiff,

ORDER

11 v.

12 ROBERT GENE RAND, *et al*,

13 Defendants.

14 This Order addresses two of the remaining three motions in limine filed by  
15 Defendant Robert Gene Rand ("Rand"). (ECF Nos. 328, 329.)<sup>1</sup> In particular, Rand seeks  
16 to exclude: (1) testimonies of Rand's current and former patients who had received  
17 Oxycodone prescriptions from Rand (ECF No. 328); and (2) testimonies offering opinions  
18 that Rand's alleged conduct fell below the standard of care as it relates to any  
19 prescriptions for controlled substances (ECF No. 329).<sup>2</sup> The government argues that  
20 Rand's motions ask for broad exclusion and should be denied at this time because the  
21 government has not proffered the claimed evidence yet. (ECF Nos. 400, 386.)

22 "A motion in limine is a procedural mechanism to limit in advance testimony or  
23 evidence in a particular area." *United States v. Heller*, 551 F.3d 1108, 1111 (9th Cir.  
24 2009). It is a preliminary motion that is entirely within the discretion of the Court. *See Luce*

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26 <sup>1</sup>The Court has reviewed the government's responses (ECF Nos. 400, 386) and  
Rand's replies (ECF No. 407, 396).


27 <sup>2</sup>Rand offers as an example a letter from Dr. David G. Greenberg to DEA Special  
28 Agent Michael Kellerman that Rand's management of the opioid prescriptions to the  
victim identified in count 14 fell below the standard of care. (ECF No. 329 at 2.)

1 v. *United States*, 469 U.S. 38, 41–42 (1984). To exclude evidence on a motion in limine,  
2 “the evidence [must be] inadmissible on all potential grounds.” *Ind. Ins. Co. v. Gen. Elec.*  
3 *Co.*, 326 F. Supp. 2d 844, 846 (N.D. Ohio 2004) (citing *Luce*, 469 U.S. at 41 n.4). “Unless  
4 evidence meets this high standard, evidentiary rulings should be deferred until trial so  
5 that questions of foundation, relevancy and potential prejudice may be resolved in proper  
6 context.” *Hawthorne Partners v. AT&T Techs., Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill.  
7 1993).

8 The Court construes the government’s responses to indicate that the government  
9 may not be offering the evidence that Rand seeks to exclude. Moreover, it is not clear to  
10 the Court that the disputed evidence is inadmissible on all potential grounds. Accordingly,  
11 the Court finds that a ruling on the evidentiary issues raised in Rand’s motions in limine  
12 should be deferred until trial, when the Court may consider admissibility in the context of  
13 the other evidence presented.

14 For these reasons, Rand’s two motions in limine (ECF Nos. 328, 329) are denied  
15 without prejudice.

16 DATED THIS 10<sup>th</sup> day of April 2017.

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20 MIRANDA M. DU  
21 UNITED STATES DISTRICT JUDGE  
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